***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+WRIT PETITION No.22121 OF 1995

%Dated 07-11-2006

Between:

P. Venkatarayudu

… Petitioner

AND

The Andhra Bank,
Rep., by its General Manager (Personnel),
Personnel Department, Central Office,
Saifabad, Hyderabad & another.

… Respondents

! Counsel for Petitioner: Sri P.Naveen Rao, Advocate

^Counsel for Respondents: Sri Abhinand Kumar. Advocate

<GIST:

> HEAD NOTE:

? Cases referred

AIR 1995 SC 1053
(2001) 10 SCC 43
(1997) 3 SCC 371
(2006) 8 SCC 62

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22121 of 1995

Dated: 07-11-2006

Between:

P. Venkatarayudu

… Petitioner

AND

The Andhra Bank,
Rep., by its General Manager (Personnel),
Personnel Department, Central Office,
Saifabad, Hyderabad & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22121 of 1995

O R D E R :

The petitioner, who at the relevant time was working as Manager at Pitlam Branch of Andhra Bank, was served with a charge memo dated 30.09.1988. Not being satisfied with the explanation offered by the petitioner, the Assistant General Manager, who was the disciplinary authority, appointed an enquiry officer. The enquiry officer after holding enquiry submitted his report on 27.02.1993. The enquiry officer held charges 1(a), 1(b), 1(c), 5, 6(b), 7, 8, 9 and 10 as proved and charges 1(d), 2, 3, 4, 6(a) and 11 as not proved. The Assistant General Manager, who initiated the disciplinary proceedings and who by the time of submission of enquiry report was promoted as Deputy General Manager, issued proceedings No.66/20/V/101/1112 dated 03-01-1994 imposing the punishment of reversion of the petitioner from MMGS-II to JMGS-I, fixing his basic pay at Rs.4390/-. An appeal filed by the petitioner to the General Manager (Personnel) on 09-05-1994 having been rejected by the order of the General Manager (Personnel) passed on 21.04.1995, the present writ petition is filed.

Sri P. Naveen Rao, learned counsel for the petitioner, at the outset, submitted that the Assistant General Manager, who was the disciplinary authority at the time of initiation of disciplinary proceedings, had become an appellate authority under the Andhra Bank Officer Employees' (Conduct) Regulations, 1981 (for short 'the Regulations') in view of his promotion as Deputy General Manager and, therefore, the imposition of punishment by him purporting to exercise his jurisdiction of disciplinary authority is illegal, arbitrary and contrary to the regulations. Learned counsel also contended that in respect of some of the charges, allegations relating to the period subsequent to his transfer from the Pitlam Branch were made and that this fact shows total non-application of mind on the part of the disciplinary authority in dealing with the case of the petitioner and, therefore, the enquiry is vitiated on this count.

Sri Abhinand Kumar, learned counsel appearing for the respondents, vehemently resisted the contentions raised on behalf of the petitioner. The learned counsel contended that though under the un-amended regulations, which were in force at the relevant point of time, the Assistant General Manager was the disciplinary authority, as per Regulation 5(3) of the Regulations, the disciplinary authority or any authority higher than it may impose any of the penalties specified in Regulation No.4 on any officer or employee. Relying upon this regulation, the learned counsel submits that though at the time when the punishment was imposed on the petitioner, the disciplinary authority viz., Assistant General Manager was promoted as Deputy General Manager, he still had jurisdiction to impose punishment, being a higher authority than the disciplinary authority.

The learned counsel further submitted that the petitioner had, in fact, filed an appeal to the General Manager, who considered and

disposed of the appeal on merits and that, therefore, the petitioner has not suffered any prejudice on account of the second respondent, who became the appellate authority at the time of passing of the initial order, imposing the punishment on the petitioner, exercising the power of the disciplinary authority.

Sri P.Naveen Rao, learned counsel for the petitioner, cited a judgment of the Supreme Court in **Surjit Ghosh v. Chairman & M.D., United Commercial Bank**[1]. He has also cited another judgment of the Supreme Court in **Electronics Corporation of India v. G.Muralidhar**[2]. In **Surjit Ghosh's** case (1 supra), the employee of United Commercial Bank was dismissed from service, following an order of conviction by a Criminal Court. The said order of dismissal was challenged by him in the High Court by way of a writ petition and the writ petition was allowed and he was reinstated into service. Later, disciplinary proceedings were initiated against him for certain irregularities alleged to have been committed by him subsequent to his reinstatement and the Deputy General Manager, Zonal Office, has dismissed the employee from service. A writ petition filed by him, challenging the said order, was dismissed by a learned Single Judge and the same was confirmed by a Division Bench. On appeal filed by him, the Supreme Court reversed the judgments of the High Court and directed his reinstatement. The Supreme Court held that as the Deputy General Manager, who was the appellate authority, exercising the powers of the disciplinary authority, dismissed the employee, the employee has lost the right of appeal. It is apt to extract here para-5 of the said judgment, which reads thus:-

> "The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager

is higher in rank than the disciplinary authority, viz., the Divisional Manager/ AGM [Personnel]. According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules / Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases, while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside."

Similar is the case in **Electronics Corporation of India's** case (2 supra). In fact, the case of **Surjit Ghosh** (1 supra) was referred to and followed in this judgment.

As can be seen from the afore extracted portion of the judgment of the Supreme Court in **Surjit Ghosh** (1 supra), the dismissal order passed by the appellate authority exercising the powers of the disciplinary authority was invalidated for the reason that the employee was denied the valuable right of appeal by such exercise of power by the appellate authority.

We have, however, a different set of facts in the instant case. Undoubtedly, at the time when the order was passed by the Deputy General Manager, un-amended schedule was in force, according to which the Assistant General Manager was the disciplinary authority and the Deputy General Manager was the appellate authority, with the power of revision lying with the General Manager. Of course, later the said schedule was amended, by which the Deputy General Manager was made the disciplinary authority and the General Manager was made an appellate authority. It is not disputed by the petitioner that under Regulation No.5.3 of the Regulations, the disciplinary authority or any authority, higher than the disciplinary authority, may impose any of the penalties specified under Regulation No.4 on any officer or employee. The Deputy General Manager, being the higher authority, to the Assistant General Manager, was, therefore, competent to impose the punishment. Though an appeal to the General Manager was not provided at the relevant point of time, the fact remains that the petitioner, under the impression that the General Manager was the appellate authority, filed the appeal before him and the said appeal was entertained and decided by the General Manager, on merits, acting as an appellate authority. The ratio laid down by the Apex Court in the aforementioned two judgments, therefore, does not apply

to this case, because the petitioner had availed the remedy of appeal before the General Manager, though the General Manager had only the revisional powers at that point of time and he exercised the powers of the appellate authority. Factually and effectively, the petitioner was not, thus, denied the right of appeal. It is not the case of the petitioner that the General Manager ought not to have acted as an appellate authority as he had no jurisdiction in that regard. All that Sri P.Naveen Rao argued was that the Deputy General Manager, being the appellate authority, ought not to have exercised the powers of the disciplinary authority.

In **Balbir Chand Vs Food Corporation of India Limited**[3], the judgment in **Surjit Ghosh** (1 supra) was distinguished. The Apex Court in the said case held that there is no prohibition in law that the higher authority should not take decision or impose the penalty as preliminary authority in the matter of disciplinary action and on that basis it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. While so holding, the dismissal order passed by the appellate authority was upheld as the delinquent employee had a right of second appeal/revision to the higher authority.

In a recent judgment of the Apex Court in **Chairman, A.P.State Electricity Board VS M.Kurmi Nayudu**[4], the aforementioned judgments were referred. The facts in the said case are more or less are similar to the facts in the present case. The Member Secretary of the A.P. State Electricity Board was the disciplinary authority but the Chairman of the Board, who was the appellate authority imposed the punishment on the employee. When he challenged the said punishment, both the learned single Judge and the Division Bench of this Court set aside the order imposing penalty on the employee on the ground that the appellate authority had imposed the penalty. The said

judgments were reversed by the Supreme Court following the judgment in **Balbir Chand**'s case (3 supra) holding that the employee has a valuable right of appeal, which was not taken away as he has right of appeal to the Board itself, against the order of the Chairman of the Board.

As already mentioned hereinabove, the petitioner has in fact availed the remedy of appeal before the General Manager and in the light of the aforementioned facts, the case on hand is distinguishable from the judgments cited by the learned counsel for the petitioner. Since the petitioner had availed the right of appeal and no prejudice is caused on account of the Deputy General Manager acting as a disciplinary authority, I am not inclined to accept the contention of the learned counsel for the petitioner, and hence, this contention is rejected. Sri P.Naveen Rao, learned counsel for the petitioner has fairly conceded that the scope of judicial review in matters arising out of the disciplinary proceedings being restrictive and that he does not propose to press the challenge made to the findings of the enquiry officer, as accepted by the disciplinary authority and as confirmed by the appellate authority, on merits. No other contention is advanced.

For the aforementioned reasons, I do not see any reason to interfere with the impugned order.

The writ petition is accordingly dismissed. No order as to costs.

_____

C.V.NAGARJUNA REDDY, J

07-11-2006
ES/Msr/MDAA.

NOTE : L.R. copy be marked.
(B/O)
Msr.

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22121 of 1995

07-11-2006
(Msr)

---

[1] AIR 1995 SC 1053

[2] (2001) 10 SCC 43

[3] (1997)3 SCC 371

[4] (2006)8 SCC 62